

*Building a Sustainable  
Cannabis Market  
for Vermont:*

*Empowering legacy growers to thrive in the  
regulated marketplace*

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# Disclaimers

- ❖ The opinions presented herein are mine alone, and do not represent the views of any client.
- ❖ No compensation has been or will be received from any person in connection with this presentation.
- ❖ I am *an* attorney, but I'm not *your* attorney. Nothing herein should be construed as legal advice.

# Goal:

A system for regulated cultivation and sale of cannabis that:

- ❖ Encourages existing suppliers to transition to the regulated market;
- ❖ Enables fair competition and prevents monopolization;
- ❖ Favors small cultivators over larger ones; and
- ❖ Promotes equity and sustainability.

# Broad Statutory Authority

- ❖ Small Cultivator Exceptions (§904a)
- ❖ License Tiers (§901(d)(2))
- ❖ Vertical Integration and the “One-License Rule” (§901(d)(3))
- ❖ Limiting Impact of Prior Criminal Histories

# The (Mandatory) Small Cultivator Exception

- ❖ General Assembly expressed its intent to “move as much of the illegal market as possible into the regulated market” and “encourage participation in the regulated cannabis market by small, local farmers”
- ❖ To further these goals, Board *shall*:
  - ❖ “Consider policies to promote small cultivators”
  - ❖ “Consider the different needs and risks of small cultivators when adopting rules”; and
  - ❖ “make an exception or accommodation...where appropriate”

\* Act 164, §904a

# 904a Exceptions (cont'd)

- ❖ Board's authority is nearly unconstrained:
  - ❖ Environmental/land use requirements (§869) are off limits (but...)
  - ❖ Must be “appropriate”
- ❖ Keep the applications simple
  - ❖ What information is critical to your licensing decision?
  - ❖ Stand up a licensing and compliance support infrastructure for small growers
- ❖ Keep fees low

# 904a Exceptions (cont'd)

- ❖ Security & defining “enclosed, locked facility”
  - ❖ Fences? Key-cards? Cameras?
  - ❖ Greenhouses
  - ❖ Agri-tourism
- ❖ Packaging/labeling: contract up the supply chain?
- ❖ Testing: flexibility if initial capacity is constrained
- ❖ Seed-to-sale tracking – mandating costly software solutions

*Get out there and talk with the farmers!*

# 904a(d):

## The Small Grower Jump-Start

- ❖ “Upon licensing, a small cultivator may sell cannabis to dispensaries”.
- ❖ Meaningful language, unique to small growers
- ❖ Legislature wanted an economic jump-start for small growers when retail market is initially small.
- ❖ Reiterated via S.25’s affirmative requirement that dispensaries must purchase from 904a growers.
- ❖ Board should consider a limited 904a exception to seed-to-sale tracking requirements.

# The One-License Rule

- ❖ §901(d)(3): vertical integration desirable; horizontal monopolization proscribed.
- ❖ One license of each type, one location per license.
- ❖ Affiliates: direct or indirect control
  - ❖ 10% ownership – direct or beneficial
    - ❖ Trust arrangements, nominees, etc.
    - ❖ Family members
  - ❖ Other indicia of control:
    - ❖ Executives/directors
    - ❖ Franchisors
    - ❖ Voting rights, corporate veto rights, etc.
    - ❖ Management contracts
- ❖ Disclosure & Public Visibility

# License Tiers

- ❖ **Cultivators** (mandatory) – by size
  - ❖ Enable Intervale-style co-location of farms
  - ❖ “one location per license” does not preclude multiple licenses per location!
- ❖ Others – by risk profile?
  - ❖ **Retailers** (mandatory)
    - ❖ consumable vs. topical?
    - ❖ Seeds and clones
    - ❖ General stores
  - ❖ **Manufacturers** (discretionary)
    - ❖ Extractors vs. manufacturers
  - ❖ **Wholesalers** (discretionary)
    - ❖ Grower co-ops
- ❖ Fees – type, size, indoor/outdoor

# Criminal Histories

- ❖ Board cannot deny a license or work authorization unless the person “*presently poses a threat to public safety or the proper functioning of the regulated market*” (§§ 883-884, 975-976)
  - ❖ Senate Judiciary, February 2019
  - ❖ Focused on violence / organized crime
- ❖ Systemic biases in policing and prosecution: from policing to charging to sentencing, the end result is that VT has the nation’s worst racial disparity.
- ❖ Despite our progress, many existing growers have records that are still not eligible for expungement.

# Questions?

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